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Technology Center 2100

Paper No. 6

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In re Application of: Andrew R. Osborn)	DECISION ON PETITION
Application No. 09/982,601)	FOR ACCELERATED
Filed October 18, 2001)	EXAMINATION UNDER 37
For: METHOD OF COMMUNICATING)	C.F.R. §1.102(d) and M.P.E.P. §
ACROSS AN OPERATING SYSTEM)	708.02(VIII)

This is a decision on the petition, filed November 26, 2002 under 37 C.F.R. § 1.102(d) and M.P.E.P. § 708.02(VIII): Accelerated Examination, to make the above-identified application special.

The petition is **DISMISSED**.

M.P.E.P. § 708.02, Section VIII which sets out the prerequisites for a grantable petition for Accelerated Examination under 37 C.F.R. §1.102(d) states in relevant part:

A new application (one which has not received any examination by the examiner) may be granted special status provided that applicant (and this term includes applicant's attorney or agent) complies with each of the following items:

(A) Submits a petition to make special accompanied by the fee set forth in 37 CFR 1.17(h);

(B) Presents all claims directed to a single invention, or if the Office determines that all the claims presented are not obviously directed to a single invention, will make an election without traverse as a prerequisite to the grant of special status.

The election may be made by applicant at the time of filing the petition for special status. Should applicant fail to include an election with the original papers or petition and the Office determines that a requirement should be made, the established telephone restriction practice will be followed.

If otherwise proper, examination on the merits will proceed on claims drawn to the elected invention.

If applicant refuses to make an election without traverse, the application will not be further examined at that time. The petition will be denied on the ground that the claims are not directed to a single invention, and the application will await action in its regular turn.

Divisional applications directed to the nonelected inventions will not automatically be given special status based on papers filed with the petition in the parent application. Each

such application must meet on its own all requirements for the new special status;

(C) Submits a statement(s) that a pre-examination search was made, listing the field of search by class and subclass, publication, Chemical Abstracts, foreign patents, etc. A search made by a foreign patent office satisfies this requirement;

(D) Submits one copy each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record; and

(E) *Submits a detailed discussion of the references, which discussion points out, with the particularity required by 37 CFR 1.111 (b) and (c), how the claimed subject matter is patentable over the references.* (Italics added.)

In those instances where the request for this special status does not meet all the prerequisites set forth above, applicant will be notified and the defects in the request will be stated. The application will remain in the status of a new application awaiting action in its regular turn. In those instances where a request is defective in one or more respects, applicant will be given one opportunity to perfect the request in a renewed petition to make special. If perfected, the request will then be granted. If not perfected in the first renewed petition, any additional renewed petitions to make special may or may not be considered at the discretion of the Group Special Program Examiner.

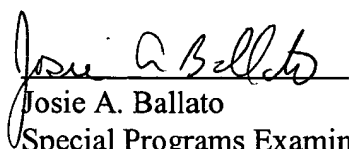
Petitioner's submission is deficient in that there is no detailed discussion of the references as required by section (E) to the extent required by 37 CFR 1.111(b) and (c). Petitioner's submission relies upon lifted phrases of each references' abstract to comply with the requirement of "a detailed discussion of the references" coupled with a statement that the particular reference does not disclose or suggest one step of the method claim. The *identical step* is used to point out how the claimed subject matter is patentable over the references identified as "most closely related" by petitioner. Furthermore, the discussion of the claimed subject matter merely asserts that the references do not "disclose or suggest extracting a second process address from one of the memory sources to determine a location of a second process to execute *prior to the completion of the execution of the executable code of the initial process in such a way as to optimize the CPU's resources and expedite the transfer of data.*" (Emphasis added.) However, neither independent Claims 1 or 35 recited "...in such a way as to optimize the CPU's resources and expedite the transfer of data" and Claim 35 does not recite the limitation "... to execute prior to the completion of the execution of the executable code of the initial process." The assertions made regarding the patentable subject matter do not match the scope of the independent claims and therefore the submission does not point out how the ***claimed subject matter*** is patentable over the references.

In addition petitioner also relied upon a PCT search report from an application not claimed by applicant in his priority statement. Yet applicant's comparison regarding those references found on page 5 of the petition states "[t]he International Preliminary Examining Authority ... concurs with Applicant's determination that the prior art does not disclose the specific method steps outlined above. In other words, the International Preliminary Examining Authority states that Claims 1-35 of the subject application meet the criteria set out in PCT Article 33(2)-(4) such that these claims ***are novel, include an inventive step, and meet the requirements for industrial applicability.***" It is unclear how the petitioner has arrived at this conclusion. The search report provided lists three US

patents as “Y” category documents. “Y” is defined as a “**document of particular relevance**; the claimed invention **cannot** be considered to involve **an inventive step** when the document is combined with one or more other such documents, such combination being obvious to a person skilled in the art.” Again, applicant has not claimed the PCT application for priority and it cannot be assumed the claimed invention in the US application is even related to the invention evaluated for the PCT application’s search report. However, since petitioner concludes that “any combination of the cited prior art references does not include each and every element of the subject method as recited in independent Claims 1 and 35 ... are not obvious in light of the cited prior art patents”, it is assumed the claims are identical between the PCT filing and the US application. Petitioner’s submission therefore is deficient in that there is no *detailed discussion* of the PCT cited references and he does not point out how the *claimed subject matter is patentable over the references*.

Accordingly, the Petition is **DISMISSED**. The application file is being forwarded to Technology Center 2100's Central Files to await examination in its proper turn based on its effective filing date. Petitioner is entitled to one opportunity to perfect the request in a renewed petition to make special. Any request for reconsideration must be filed within TWO MONTHS of the mailing date of this decision.

Telephone inquiries regarding this decision should be directed to the undersigned at 703-308-0269.



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